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cc: Leslie

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United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Utah State Office
P.O. Box 45155
Salt Lake City, UT 84145-0155
<http://www.blm.gov>



IN REPLY REFER TO:

3590

UTU-72699

(UT-923)

JUN 11 2009

CERTIFIED MAIL--Return Receipt Requested 7008 1140 0000 3706 0591

Mr. Jim Lekas
Lexco, Inc.
P.O. Box 1198
582 North Vernal Avenue
Vernal, Utah 84078

Re: Mining Plan Modification Approval for Cowboy Mine #6, 7 and 8 shafts and associated access, Federal Gilsonite Lease UTU-72699.

Dear Mr. Lekas:

MINING PLAN MODIFICATION APPROVAL

Background- The Bureau of Land Management (BLM) Utah State Office, received your revised mining plan approval dated November 19, 2007. The plan has been reviewed and found to meet the regulations at 3592.1(c).

Approval- This Mining Plan Modification Approval is approved for Federal gilsonite Lease UTU-72699 located on the Cottonwood Vein. The approval is granted for the following items.

1. Shaft Site #6 and associated access which is approximately 1600 feet SE of the Cottonwood number 1 shaft location.
2. Shaft Site #7 and associated access which is approximately 3100 feet SE from the Cottonwood number 1 shaft.
3. Shaft site #8 with its associated access which is approximately 4000 feet NW from the Cottonwood number 1 shaft. (See Enclosed Map)

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DIV OF OIL, GAS & MINING

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The following additional conditions of approval will apply to this action:

Conditions of Approval-

1. The operator shall remove the top soil and stack it no higher than 5 feet high. The operator shall contact the Vernal Field Office for seeding specifications and then proceed with the seeding according to specifications.
2. Past conditions of approval and lease stipulations are at enclosure 1. There are no further conditions approvals for this plan. The current approved mine plan and the operator committed measures cited in the application for the mine plan modification dated (10/19/2007 and with its associated modifications) have been found to be sufficient.

Recommendations-

1. The operator should take about 3 inches of soil when stripping the vegetation. DO NOT include the clayey salt affected soil from the "slickspots" - these are pretty easy to identify by the mat saltbush and lack of sagebrush on them. The stripped top soil should be immediately seeded as per the Vernal Field Office specifications.
2. It has been found in the past that the final site seeding should be done immediately after the ripping. The best time for seeding is in the late fall.

NEPA – A review under the National Environmental Policy Act was conducted and a finding of no significant impact was found as per EA- DOI-BLM-UT-9230-2009-0007 (date January 29, 2009). The lessee is responsible for abiding by the mining plan modification submitted as analyzed including all mitigation and stipulations in the incorporated as part of the mine plan from the previous approvals. This approval does not constitute any approvals required by the Division of Oil, Gas and Mining or any other permits necessary to commence operations.

Bond- At the present time there is \$130,000 bond to cover reclamation, rentals and royalties for 4 shaft sites. At the present time there are only 3 shaft sites that have been disturbed. One more shaft site can be disturbed prior to recalculating the bond, therefore at this time the bond is sufficient.

Appeal Rights- You have 30 days to appeal this approval to the Board of Land Appeals, Office of the Secretary, in accordance with the regulation at 43 CFR Part 4 and Form 1842-1 (enclosure 2). If an appeal is taken, your notice of appeal must be filed in this office within 30 days following the date of this approval. The appellant has the burden of showing that the decision appealed from is in error. If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) for a stay of the effectiveness of this decision during the time that

your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and the petition for a stay must also be submitted to the Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellants' success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

For further information contact Mr. Stan Perkes, (801) 539-4036.

Sincerely,

/s/J D McKenzie

J. D. McKenzie
Acting Chief, Solid Minerals Branch

Enclosure

1. Previous Stipulations and Conditions of Approval
2. Form 1842-1 (1 p)
3. Map

bcc: Central Files
Vernal Field Office
Utah Division of Oil, Gas, and Mining (Attn. Paul Baker) P.O. Box 145801, Salt Lake City, Utah, 84114-5801

Mine Files - UTU-72699
SPerkes:sa:06/11/2009:72699, 6, 7 and 8 shaft mine plan app

Enclosure 1: Previous Stipulations and Conditions of Approval

Other Resource Protection Lease Stipulations brought forward in this EA:

- Cultural Resources: If any cultural resources are encountered during the conduct of operations, the operator would be required to cease operation and immediately notify the authorized officer's representative (Archeologist, Vernal District). Upon a field inspection of the resource encountered, measures will be determined to protect or mitigate the situation.
- Wildlife
 - Raptors: No construction activities such as erection of any headframe(s) or vacuum systems, collar fabrication, dozing of vegetation, pouring of any concrete pads and or raising any buildings will not be allowed within one-half mile of known raptor nests during the raptor nesting season.
 - Golden Eagles: For Golden eagles no construction will be allowed between February 1, to July 15 (based upon the current inventory to this is applicable to Lot 1, Sec. 1 and SE1/4SE1/4 Sec. 35)
 - Ferruginous Hawks: For Ferruginous hawks no construction will be allowed from March 1, to July 15 (based upon current inventory this is applicable on the NW Sec. 34. Along the segment of the Gilsonite vein in the Northwest Quarter of Section 34, any roads and/or turnarounds shall be kept to the north of the vein.
 - Antelope: No Construction will be allowed between May 15 and June 20 to avoid impacts to antelope during kidding season.
- Reclamation: The areas disturbed under the existing Gilsonite prospecting permit (U-72699) are not reclaimed to the satisfaction of the BLM; therefore, the reclamation liability for the disturbances will be made part of the lease.
- Hazardous Substance: If a hazardous substance release occurs, the Vernal District Hazmat coordinator (435-781-4431) shall be notified immediately, and cleanup of the spoil by the lessee shall be done as quickly as possible according to the instructions given to the lessee.
- Vehicular Travel: There shall be no vehicular cross country travel allowed during muddy and wet periods, when such travel will produce a rut or track of greater than or equal to 4 inches in depth.
- Ground Water: Should ground water be encountered of greater than 5 gallons per hour in the subsurface during the mining of Gilsonite, LEXCO shall contact the Utah State Office Mining Engineer (801-539-4036) and the Vernal District Office Hydrologist or Geologist (435-781-4400) within 24 hours of the ground water flow and report on the following:

- True Vertical encountered depth
- Subsurface location at which it was encountered
- The approximate flow rate into the mine
- Association of flow with any major geologic fracture such as a fault or fracture surface.

Based upon this information, the AO will determine if the lessee will be required to monitor the effect of the flow into the mine on any nearby wildlife, or stock wells. If such wells are affected the AO may require the lessee to supply replacement water to the affected stock or wildlife ponds.

All groundwater flows shall be sampled and analyzed for major cations, anions, total dissolved solids, pH, and total suspended solids. Besides these analyses the lessee shall follow the rules and regulation of the State of Utah pertaining to the sampling parameters for pollutants and surface effluent discharges from the proposed Gilsonite mine (Utah Administrative Code, August 4, 1995, R317-1.2: General Requirements: R317-8.3: Application Requirements (for a UPDES Permit: R317-6-2: Ground Water Quality Standards). Results for these analyses and sampling parameters for pollutants as required by the State of Utah shall be provided to the Vernal District office Hydrologist (Vernal District Office 170S., 500E., Vernal, Ut. 84078) and Utah State Office Mining Engineer (USO, P.O. Box 45155, Salt Lake City, Ut, 84174-0155) within 30 working day of encountering the water.

- Recreation. Any exhaust blowers shall be directed downward to the east.
- Conflicts. If another regulatory agency issues guidance or authority that conflicts with these stipulations, the lessee shall notify the authorized officer (AO) immediately for resolution.

Stipulation Waiver: Any of these stipulations may be waived by the Authorized Officer (AO) if either the resource values change or the lessee/operator demonstrates to the satisfaction of the AO that adverse impacts can be mitigated.

Mine Plan Approval Conditions of Approval July 18, 1996

1. **As Built Drawings.** The Lessee will submit to the Deputy State Director, Natural Resources, BLM Utah State Office, at the above address, a scaled map showing the construction and the survey coordinates (State Plane or metes and bounds description) of each of the mine features, buildings, and vein, within 90 days after construction is complete. The surveyor that conducts the survey will be licensed and shall stamp the drawing. Land features will be shown on the drawing. These will include but are not limited to section

corners, roads, and section lines. An updated map will be sent to BLM within 90 days after construction is completed on any new sites.

2. **Quarterly Production Maps.** The lessee will submit maps quarterly to the BLM Utah State Office of the BLM showing the amount of gilsonite removed in the previous quarter. These will be submitted on 15 Jan., 15 Apr., 15 Jul. and 15 Oct. The maps will be scaled and show the depth of cut and the thickness of the vein at intervals that can be used to verify production. These maps shall be certified by a registered engineer, land surveyor or an official of the company.
3. **Yearly Mining Plan.** By 15 January of each year, the lessee will submit a one-year mine plan to the BLM Utah State Office showing the proposed mining sequences for the coming year on a scaled map. The one-year plan will describe the extraction sequence and the projected tonnages of ore to be extracted for that year.
4. **Lease Boundary Marking.** The lessee will mark the corners of the boundary of the lease with metal fencing posts and metal painted signs at each corner of the lease. The signs will show as a minimum the legal subdivision and the Federal gilsonite lease number. These signs will be located by survey. A scaled copy of this survey (map) will be sent to BLM Utah State Office 180 days after the start of construction of surface facilities.

3 Shaft Mine Plan approval Stipulations

1. No work can commence until the minimum bond amount has been accepted by the BLM in writing.

The following conditions of approval are standard for other resources on Gilsonite operations:

1. **Cultural Resources.** A Class III archeological survey may be required. All personnel will refrain from collecting artifacts and from disturbing any significant cultural resources in the area. The lessee is responsible for informing all persons in the area who are associated with this project that they may be subject to prosecution for knowingly disturbing historic or archaeological sites or for collecting artifacts. All vehicular traffic, personnel movement, construction, and restoration activities shall be confined to the areas examined, as referenced in the archaeological report, and to the existing roadways and/or evaluated access routes. If historic or archaeological materials are uncovered during construction, the lessee is to immediately stop work that might further disturb such materials and contact the Authorized Officer (AO).

Within five working days after contacting the BLM, the AO will inform the lessee as to:

- 1) whether the materials appear eligible for the National Historic Register of Historic Places; 2) the mitigation measures that the lessee will likely have to undertake before the site can be used (assuming in situ preservation is not necessary); and, 3) a time frame for

the AO to complete an expedited review under 36 CFR 800.11 to confirm, through the State Historic Preservation Officer, that the findings of the AO are correct and that mitigation is appropriate.

If the lessee wishes, at any time, to relocate activities to avoid the expense of mitigation and/or the delays associated with this process, the AO will assume responsibility for whatever recordation and stabilization of the exposed materials may be required. Otherwise, the lessee will be responsible for mitigation costs. The AO will provide technical and procedural guidelines for the conduct of mitigation. Upon verification from the Authorized Officer (AO) that required mitigation has been completed, the lessee will then be allowed to resume activities.

2. **Paleontology.** The lessee shall stop construction activities and notify the AO if paleontological resources (vertebrate fossils) are exposed or identified during construction or mining. The BLM will provide mitigation measures to avoid impacts while allowing construction or mining. Costs of mitigation will be borne by the lessee.
3. **Reclamation.** A seeding and grading plan and schedule will be submitted and approved by the AO prior to finalizing the reclamation. All disturbed areas will be reclaimed with native plant species. The seed mixture will be provided by the AO.

The reclamation must establish a desired self-perpetuating diverse plant community. The requirement is to attain **75% basal cover** based on similar undisturbed adjacent native vegetative community, and comprised of desired species and/or seeded species within 5 years of initial reclamation action. However if after three (3) growing seasons there is less than **30%** of the basal cover based on similar undisturbed native vegetative community, then the Authorized Officer may require additional seeding efforts. The reclamation bond will not be released until the AO accepts the reclamation in writing. Concurrent reclamation practices will be used.

Topsoil will be stripped and salvaged to provide for sufficient quantities to be re-spread to a depth of at least four to six inches (or more if readily available on-site) over the disturbed areas to be reclaimed. Topsoil will be stockpiled separately from subsoil materials. Topsoil to be stored for more than one year will be: 1) windrowed, where possible, to a depth of three to four feet near the margin [other than the margin with the run-off berm] of the north vein mine site ; and 2) broadcast seeded with the prescribed seed mixture furnished by the AO immediately after windrowing, promptly followed by a dozer or other tracked vehicle walking the windrow to cover the broadcast seed. For the windrowing the following pure live seed mixture will be utilized and must be noxious weed free as per Utah Department of Agriculture regulation R-68-8-2.

Mulching may be one method considered to enhance the re-establishment of desired native plant communities. If straw or hay mulch is used, the straw and hay must be certified to be weed-free and the documentation submitted to the AO prior to usage.

Upon the completion of mining operations, all equipment and facilities shall be removed. All waste rock will be dumped into the production shaft before it is sealed. If waste rock is to be left, the lessee must show that it will not contaminate the surrounding area and that there is sufficient topsoil (i.e., greater than 6 inches to cover the rock. All materials left in the mine will be reported to the AO prior to removal of the ability to descend down the shaft via the hoist and bucket. Written approval shall be obtained by the AO to leave the materials in the mine.

The disturbed areas will be reshaped to approximate the original [pre-disturbance] contour. Stockpiled topsoil shall be spread over the re-contoured areas.

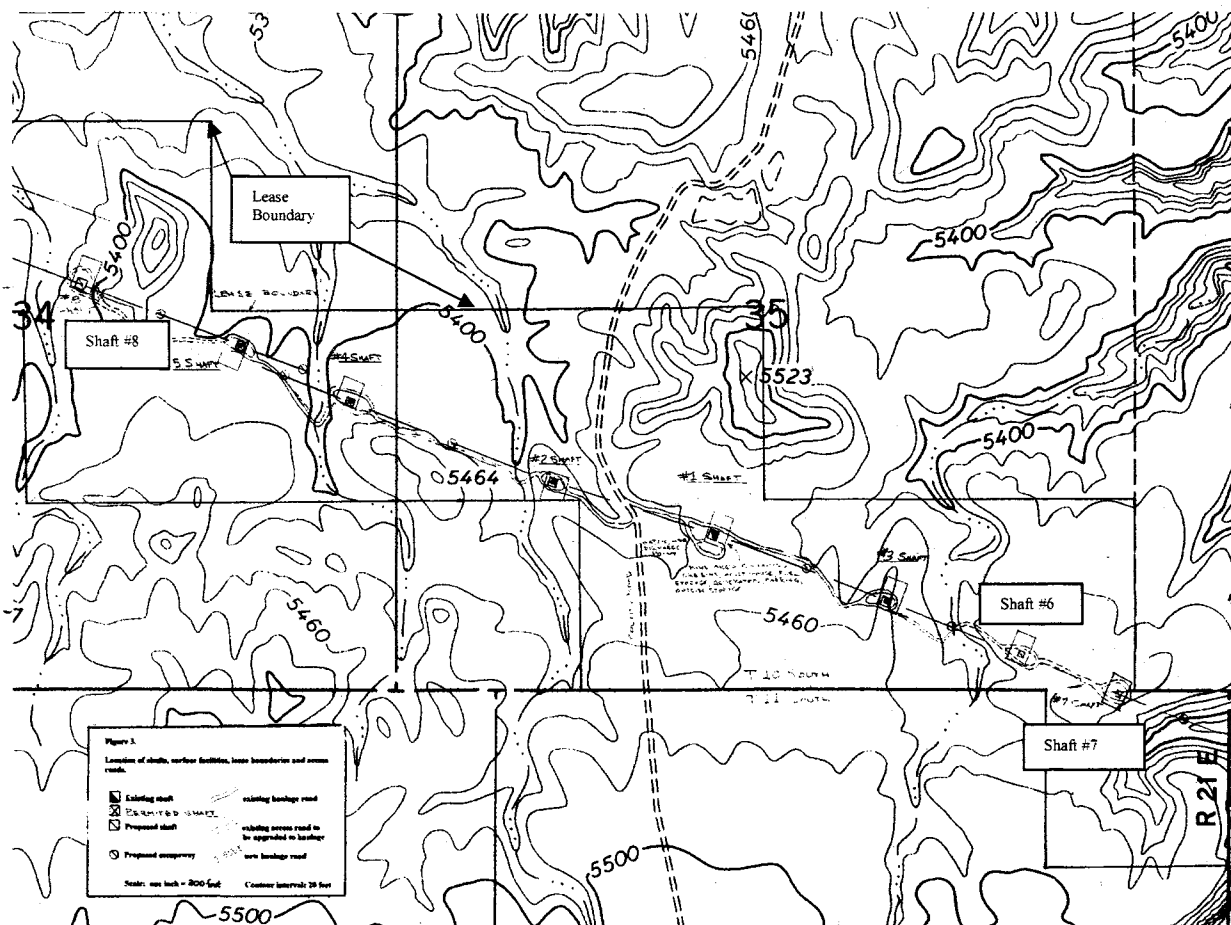
4. **Surface Pillar.** The lessee shall leave a minimum of 35' between the surface and the upper most workings in the mine. Any proposed surface pillar size of more than 50 feet or less than 35 feet will require prior approval by BLM. The lessee will submit documentation to the AO showing that the reduced pillar size will not result in any long-term surface subsidence. The AO must approve changes in surface pillar size prior to any changes.
5. **Shaft Sealing.** Final designs shall be submitted and reviewed by BLM prior to seal construction. The collar and other structures shall be removed. The final concrete seal over openings that penetrate the surface must conform to the following as a minimum:
 - a. **Bedrock** - If the seal is to be in an exposed rock outcrop, the top of the seal shall be constructed so as to conform with the contour of the outcrop and shall be no higher than the adjacent rock. The color of the concrete shall be of such a color as to blend in the surrounding rock outcrop/gilsonite. The bottom of the seal shall sit on bedrock and shall be placed in the gilsonite.
 - b. **Soil Area**- If the shaft seal is to be in an area where soil will cover the shaft seal, the top of the seal shall be placed in bedrock so that the shaft seal is a minimum of 3 feet below the top of the soil cover. There shall be no alluvial material between the shaft cover and the gilsonite in the vein and the seal must be in-bedded in the gilsonite on the vein side of the cover.
6. **Hazardous Materials.** The lessee shall remove all petroleum spills and dispose of the soil and product properly at an approved waste site at the lessee's own cost. Any spill over 50 gallons shall be reported to the Authorized Officer. No chemicals subject to SARA Title III in amounts greater than 10,000 lbs will be used. All spills of petroleum and chemicals will be cleaned up and disposed of in a proper manner.

7. **Control of Invasive and Noxious Weeds.** The lessee is required to control all invasive and noxious weeds during reclamation until there is a written release from BLM. The Utah State Commissioner of Agriculture has officially designated 18 species listed below as noxious in Utah. NOTE: Any additions (whether by the County, State or BLM) to this list will be required to be controlled under this stipulation.

<u>CODE</u>	<u>COMMON NAME</u>	<u>SCIENTIFIC NAME</u>
1.	Bermudagrass	<i>Cynodon dactylon</i> (L.) Pers.
2.	Field Bindweed	<i>Convolvulus</i> spp. (Wild Morning-glory)
3.	Broad-leaved Pepperweed	<i>Lepidium latifolium</i> L. (Tall Whitetop)
4.	Canada Thistle	<i>Cirsium arvense</i> (L.) Scop.
5.	Diffuse Knapweed	<i>Centaurea diffusa</i> Lam.
6.	Dyers Woad	<i>Isatis tinctoria</i> L.
7.	Perennial Sorghum spp.	including but not limited to Johnson Grass (<i>Sorghum halepense</i> (L.) Pers. and <i>Sorghum Alnum</i> (<i>Sorghum alnum</i> , Parodi)
8.	Leafy Spurge	<i>Euphorbia esula</i> L.
9.	Medusahead	<i>Taeniatherum caput-medusae</i> (L.) Nevski
10.	Musk Thistle	<i>Carduus nutans</i> L.
11.	Quackgrass	<i>Agropyron repens</i> (L.) Beauv.
12.	Russian Knapweed	<i>Centaurea repens</i> (L.)
13.	Scotch Thistle	<i>Onopordium acanthium</i> L. (Cotton Thistle)
14.	Spotted Knapweed	<i>Centaurea maculosa</i> Lam.
15.	Squarrose Knapweed	<i>Centaurea squarrosa</i> Roth
16.	Whitetop	<i>Cardaria</i> spp.
17.	Yellow Starthistle	<i>Centaurea solstitialis</i> L.
18.	Purple loosestrife	<i>Lythrum salicaria</i>

7. **Containment Berm.** No topsoil from the lease shall be used in the construction of the containment berm(s) in the lease area.
8. **Condition of Approval Waiver.** Any of these conditions of approval may be waived by the authorized officer (AO) if either the resource values change or the lessee/operator demonstrates to the satisfaction of the (AO) that adverse impacts can be mitigated.

Enclosure 3. Map



**MINING PLAN APPROVED BY
BUREAU OF LAND MANAGEMENT**

Recommended By:

Mining Engineer (Date)

Approved By:

Manager (Date)